

3 June 70

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OLC 700370

# MEMORANDUM

SUBJECT: Comment on Ervin Bill As Approved by the Senate and Sent to the House

1. Recommendation. The DDP should indicate informally to Mr. MAURY the Agency attempt to secure revision of the Bill in the House, which would make the Act inapplicable to CIA. (In the Bill as passed in the Senate the only elements of the Federal Government exempted are the FBI [Section 9] and the Military.)

2. Instead of giving us an exemption, the Senate has added a lot of language explicitly designed to meet the Agency's needs. The net effect is to underline the fact that the Bill, as a whole, does apply to us, and I believe, to invite strict construction of the language in the Bill dealing with us.

3. Following is a synopsisized version of the Senate Bill's references to the Agency:

a. Section 1 (a)--this is a minor amendment.

b. Section 1 (k)--makes special provision for the presence of Counsel and other advisors during Agency disciplinary investigations.

c. Section 6--voids provisions of the Act with respect to the use of polygraph after a personal determination in each case by the DCI or his designee.

d. Section 7--modifies the application of Sections 5 and 6 to appeals to CIA personnel to a Federal Court and to the Federal Board on Employees' Rights. This Section contains an interesting reference to the Director's statutory power of summary dismissal which, it is indicated, is not effected by the Bill.

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e. Section 8--DCI's statutory authority for protection or withholding information pursuant to statute or executive order is reaffirmed, and DCI's personal certification will be conclusive re inadmissability of any information in CIA disciplinary investigations or in cases involving CIA employee appeals to a Federal Court or to the Board on Employee's Rights.

4. Section 8 does not permit the Director to exercise certification on admissability of evidence through a designee. Also the wording of Section 8, "protection of information ... pursuant to statute or executive order" is language somewhat different from what we customarily hear. ("sources and methods"). The change is not shocking, but we would have preferred to see our own language reflected in the Bill. (Presumably, the Committee had the problem, however, of accommodating CIA and NSA in the same language and therefore came up with a slightly different version.)

5. As we see it, our security operations will not be significantly affected under the language of the Senate Bill, but the job will certainly be more onerous. A closer control will be mandatory. The DCI will probably have to be prepared to play a more personal role in security cases. Perhaps the threat of language will be sufficient, but the fact is the DCI has rarely used his power of summary dismissal. Therefore, although the Ervin Bill contains a reference to this power, the climate nurturing the Bill is not adapted to the DCI's resort to that power in cases involving disciplinary investigations, or appeals. It would be far easier for us to do our security business if we had a straight exemption exactly like the FBI.

6. One additional thought, our counterintelligence and counter-espionage problems--as opposed to security implications discussed above--are certainly going to be more difficult to deal with in the future as a consequence of this Bill. For non-military Federal employees outside of CIA, the Ervin Bill is a straight-out mandate to keep their mouths shut if they are in trouble.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

EXTENSION

NO.

DATE

Deputy Chief, CI Staff 2C43

3 June 1970

25X1

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

DDP

3 June

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*[Signature]*

2.

Legislative Council

*[Signature]*

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1:2 -  
In response to your request here-  
with some views on the Ervin Bill.  
I have no objection for your send  
ing this on to Jack Maury.

1:2 -  
Just -  
if possible  
interest and use it  
connection with  
your efforts with  
Henderson + Co.

File 5-782

FORM 3-62

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